

EXHIBIT “D”

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii Citizen,) CIVIL NO. 03-00385SOM
Plaintiff,)
vs.)
HAWAII EXPRESS SERVICE, INC.,) - VOLUME 3 -
et al.,)
Defendants.)

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on for hearing on
Wednesday, March 1, 2006, at 9:04 a.m., at Honolulu, Hawaii,

BEFORE: THE HONORABLE SUSAN OKI MOLLWAY
United States District Judge

REPORTED BY: STEPHEN B. PLATT, RMR, CRR
Official U.S. District Court Reporter

APPEARANCES: TIMOTHY J. HOGAN, ESQ.
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Post Confirmation trust
for Fleming companies, Inc.

1 APPEARANCES (Continued):

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1 THE CLERK: Thank you.

2 Please be seated.

3 Please state your name and spell your first and last
4 name.

5 THE WITNESS: Brian Christensen. B-R-I-A-N,
6 C-H-R-I-S-T-E-N-S-E-N.

7 BRIAN CHRISTENSEN,
8 called as a witness on behalf of the Plaintiff, having been
9 produced and duly sworn, was examined and testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. HOGAN:

13 Q. Good morning, Mr. Christensen.

14 What is your job presently?

15 A. I am the president of C&S Wholesale, the Hawaii division.

16 Q. And what was your job in -- let's say April 1st 2003?

17 A. I was the president of Fleming Companies Hawaii division.

18 Q. And so would it be fair to say that you were the boss of
19 the people that are the employee defendants here?

20 A. Yes.

21 Q. Okay.

22 And, Mr. Christensen, what was your understanding --
23 was it your understanding that it was Fleming's intention as
24 of April 1st, 2003 to go back to the Berry system as it was
25 originally configured by Mr. Berry?

1 A. No.

2 Q. Okay.

3 Did you ever have any belief or understanding that
4 any of the employees were using Mr. Berry's database for their
5 own purposes? Personally, rather than as part of their job?

6 A. Do I believe they were using it personally?

7 Q. That's correct.

8 A. No.

9 Q. So is it fair to say that all their use was for Fleming's
10 business purposes?

11 A. As far as I know, yes.

12 Q. And, isn't it true, sir, that as the head of the
13 division, you could have just told them to stop using it as of
14 April 1st?

15 A. Yes.

16 Q. And did you ever tell them to stop using it as of April
17 1st?

18 A. No.

19 MR. HOGAN: No further questions, Your Honor.

20 THE COURT: Okay.

21 MR. BAUMANN: Your Honor, we're going to recall
22 Mr. Christensen in our case, so we are not going to examine
23 him now.

24 THE COURT: So no examination now?

25 MR. HOSODA: That's correct, Your Honor.